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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,828	06/21/2001	John Joseph Curro	7897R3	8066

27752 7590 01/07/2004

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT PAPER NUMBER

1771

DATE MAILED: 01/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/886,828

Applicant(s)

CURRO ET AL.

Examiner

Jenna-Leigh Befumo

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 June 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The Amendment submitted on September 29, 2003, has been entered. Claims 2 – 9 have been cancelled. Claim 1 has been amended and claim 10 has been added. Therefore, the pending claims are 1 and 10.
2. The rejections to claims 2 – 9 set forth in the previous Office Action are considered moot since the claims has been cancelled.
3. The Affidavit under 37 CFR 1.132 filed September 29, 2003 is insufficient to overcome the rejection of claims 1 – 9 based upon Srinivasan et al. (5,567,501) or Palumbo (WO 96/10979) as set forth in the last Office action because: The affidavit did not include all the described figures and therefore was incomplete. Figure 1, described as a bonded nonwoven fabric with a bond site aspect ratio of 1:1, was the same picture as Figure 3, described as a bonded nonwoven fabric with a bond site aspect ratio of 10:1. Further, the Examiner's copy of Figure 5 has poor resolution and the apertures and bond sites, or lack thereof, cannot be clearly discerned in the picture. Thus, the figures could not be compared to each other, or establish that the aspect ratio of the bond site is critical to the nonwoven structure and demonstrate unexpected results for an aspect ratio of at least 3.

Additionally, the Affidavit refers only to the general invention in the present application and not to the product produced by the prior art or the scope of the individual claims of the application. Thus, the Affidavit is not commensurate in scope with the claims. In other words, the claims recite an apertured nonwoven fabric with three layers where the bond sites have an aspect ratio of 3. However, the Affidavit shows that the aspect ratio is critical to an apertured

nonwoven laminates produced by forming bond sites and then applying a force to stretch the nonwoven fabric and rupture the bond sites. Since the prior art is produce by a different method, then the evidence that the aspect ratio is critical to the Applicant's method is not commensurate in scope with the claims since the method of forming the apertures is not claimed. Further, the Affidavit is not commensurate in scope with the present claims since the Applicant uses examples having an aspect ratio of 1:1, 5:1, 10:1 and 30:1, while the claims are drawn to an aspect ratio of 3:1. Thus, evidence that a bonded web with bond sites having an aspect ratio of 5:1 produces apertures only at the bond sites is not sufficient to demonstrate that a bonded web with bond sites having an aspect ratio of 3:1 would only produce apertures at the bond sites as well. Therefore, the Affidavit is not sufficient to overcome the rejections.

4. The 35 USC 103 rejection based on Srinivasan et al. (5,851,935) in view of McCormack et al. (5,964,742) is withdrawn since McCormack et al. discloses that the bond sites having an aspect ratio greater than 2 are for use in single layer self-bonded fabrics and should be distinguished from patterns made to laminate materials together (column 11, lines 1 – 3). Therefore, one of ordinary skill in the art would not rely on the teaching in McCormack et al. to change the shape of the bond sites in Srinivasan et al.

Drawings

5. While it is noted that the response indicates that corrected drawings were included with the response filed September 29, 2003, corrected drawings were not received by the Examiner and thus, could not be reviewed. Therefore, the rejections to the drawings are maintained until corrected drawings can be reviewed. It is suggested that the Applicant submit new copies of the

corrected drawings. However, the amendment to the specification is sufficient to overcome the objection to the drawing set forth in section 3 of the previous Office Action.

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "104" has been used to designate both supply roll for the first web and the supply roll for the second web. It is noted that according to the specification, the supply roll for the second should be number 105. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

7. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "130" has been used to designate both the central layer before it is bonded to the outer layers and the nip formed between rolls 134 and 136. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

8. The drawings are objected to because the copies of the photographs, Figures 8, 17A, and 17B are mostly black and it is impossible to tell what the picture is suppose to be of. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Terminal Disclaimer

9. The terminal disclaimer filed on September 29, 2003 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Application Number 09/886,730, 09/886,740, 09/886,829, 09/467,938, 09/584,676, 09/553,641, and 09/553,871 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Objections

10. Claims 1 and 10 are objected to because of the following informalities: the term "bending application". Does the Applicant mean "bedding" application as recited in the original set of claims? And the phrase "a second web joint to said first web" is grammatically awkward. Appropriate correction is required.

Claim Rejections - 35 USC § 103

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. Claim 1 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Palumbo (WO 96/10979) for the reasons of record.

13. Claims 1 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benson et al. (5,628,097).

Benson et al. discloses a nonwoven web which is weakened at a plurality of locations so that when a tensioning force is applied to the nonwoven web, the weakened locations rupture to produce a plurality of apertures (abstract). The nonwoven web can be a single nonwoven web made from bonded carded webs, spunbonded webs, meltblown webs, or multiple layers of these nonwoven webs (column 2, lines 60 – 65). Benson et al. discloses that the bonded and apertured nonwoven web used as the topsheet can be made from nonwoven laminates such as spunbond/meltblown/spunbond (SMS) laminates instead of a single nonwoven layer (column 7, lines 27 – 35). Thus, the three-layer bonded SMS nonwoven material would correspond to the applicant's invention with the two outer spunbond nonwoven layers, corresponding to the Applicant's first and second webs, and the middle, meltblown layer would be disposed in the

void space between the two outer layers. In this case, both the outer spunbond layers would be made from the same material and have bond sites.

Further, Benson et al. teaches that the bond sites are formed by protuberances 116 which can be elliptical, circular, square or rectangular in shape (column 8, lines 28 – 35). As shown in Figure 3, the protuberances and the bond sites produced are narrow and elliptical in shape. While Benson et al. fails to explicitly teach an aspect ratio of greater than 3, the bond site shown in Figure 3 is long and narrow. Even though one of ordinary skill in the art cannot use the figures to determine the exact size of the bond sites, the picture clearly shows that long and narrow bond sites are used to produce the apertured nonwoven web. Therefore, based on the disclosure and figures taught by Benson et al. it would have been obvious to one of ordinary skill in the art to choose a bond site with an aspect ratio of greater than 3 and a thickness of less than 0.020 inches in the bonded nonwoven fabric taught by Benson et al. since the figure teaches using bond sites which are long and narrow. Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose an aspect ratio of greater than 3 and a thickness of less than 0.020 inches, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955). Thus, claims 1 and 10 are rejected.

Response to Arguments

14. Applicant's arguments filed September 29, 2003 have been fully considered but they are not persuasive. The Applicant argues that based on the Affidavit provided, the rejections based on Palumbo should be withdrawn. However, as set forth above the affidavit was found

insufficient. Particularly, the Affidavit argues that the aspect ratio is critical to the process to produce an aperture nonwoven. The Applicant does not address the structure of the apertured nonwoven as it compares to the structure of the apertured nonwoven fabrics taught by the prior art. Changing the size of the aperture in the nonwoven fabric taught by Palumbo, would not destroy the invention or produce any unexpected results. Instead, the final product would have different size openings which would effect the amount of air or fluid which is allowed to pass through the nonwoven itself. Further, it has been found that a modification involving a mere change in the size of a component is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Since the Applicant argues that the bond site aspect ratio is critical to the process of making the nonwoven material, the Applicant would need to include method limitations which in commensurate in scope with the arguments in the affidavit.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-0994.

Jenna-Leigh Befumo
December 22, 2003



CHERYLA SUSKA
PRIMARY EXAMINER